



**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CAL**

**FILED**

8-22-16  
04:59 PM

Application of Tech Verb, Inc. for  
Registration as an Interexchange Carrier  
Telephone Corporation pursuant to the  
Provisions of Public Utilities Code Section  
1013.

Application 16-02-018  
(Filed February 29, 2016)

**RESPONSE OF TECH VERB, INC. ON ADMINISTRATIVE LAW JUDGE'S RULING**

Pursuant to the August 5, 2016 *Administrative Law Judge's Ruling Requiring Applicant to File a Response to Information Request within 15 days*, Tech Verb Inc. ("Tech Verb") hereby submits responses to the request for additional information regarding Tech Verb's application for Registration as an Interexchange Carrier Telephone Corporation Pursuant to the Provisions of Public Utilities Code Section 1013 now an application for a Certificate of Public Convenience and Necessity (CPCN) pursuant to Pub. Util. Code § 1001.

**I. INTRODUCTION**

On August 5, 2016, Administrative Law Judge John A. Mikita ruled that Tech Verb must provide within 15 days of the date of this Ruling i) a detailed description of the services to be provided by Tech Verb, ii) the legal basis on which Tech Verb claims the Commission can grant the requested Certificate of Public Convenience and Necessity; and iii) Proof of Tech Verb's financial resources.

**II. TECH VERB'S RESPONSES TO QUESTIONS**

- 1) Please describe in detail the services to be provided by Tech Verb? If Tech Verb operates as a switchless reseller, whose services will be resold? Address what technologies and protocols will be used to provide these services, including whether these services will be offered over broadband facilities and whether services will be offered using Time-Division Multiplexing, Internet Protocol or other protocols, including the extent to which

the services will be provided over the Public Switched Telephone Network?, i.e., Voice Over Internet Protocol, including connectivity to the Public Switched Telephone Network.

***Tech Verb responds to the Question as follows:*** Tech Verb will resell TCP/IP Broadband services, internet and point to point (metro Ethernet or Private Wide Area Network ). We will resell Time Warner's Business Class TCP/IP broadband services, both cable and fiber broadband services. We do not have plans to resell any voice products at this time.

- 2) Assuming Tech Verb will provide voice telecommunications as indicated in its application, please provide the estimated customer base for the first and fifth years of operation?

Tech Verb does not currently plan to offer voice services.

- 3) Please state the legal basis on which Tech Verb claims the Commission can grant it the requested CPCN? Among other things, Applicant's response should address Pub. Util. Code §§ 216, 233-234, 239, 710, and 1001; 47 USC 153(43) and 251; and any other statutes or case law Applicant deems relevant. Also state the legal reason(s) that Applicant believes the requested authority is necessary?

***Tech Verb responds to the Question as follows:***

**a. Tech Verb Intends to Operate as a Telephone Corporation under the California Public Utilities Code.**

Pursuant to California Public Utilities ("PU") Code Section 1001, the Commission has the authority to grant a CPCN to, among other entities, a "telephone corporation" constructing "a line, plant, or system, or of any extension." Under PU Code Section 234(a), a telephone corporation is defined as "every corporation or person owning, controlling, operating, or managing any telephone line for compensation within this state." The PU Code further defines "telephone lines" to include "all conduits, ducts, poles, wires, cables, instruments, and appliances, and all other real estate, fixtures, and

personal property owned, controlled, operated, or managed in connection with or to facilitate communication by telephone.”

Tech Verb filed its Application for registration as a Switchless reseller and “Switchless resellers are firms that purchase “bulk” long distance services from carriers and resell them to their own customers. They qualify for volume discount plans by aggregating the business of multiple customers who would not individually qualify for volume discounts.” Central Office Tel. v. AT&T, 108 F.3d 981, 986 (9th Cir. Or. 1997) [Superseded by Statute in Beach v. Atlas Van Lines, Inc. (In re Household Goods Movers Antitrust Litig.), 2009 U.S. Dist. LEXIS 131302 (D.S.C. Sept. 10, 2009) pertaining to misquoting of rates].

In 1992 Cal. PUC lexis 972, 44 CPUC 2d 747 it was stated that “there are at least two types of NDIEC reseller, those that own or lease, and operate facilities such as telephone cable and switching equipment, and those which provide telephone services over facilities owned by others. In our opinion, both types of resellers are public utilities as defined in the California Constitution and the Public Utilities Code.” Further “in a determination of public utility status, it does not matter whether the ownership, control, operation, or management of the telephone line is direct or indirect. As Article XII, Section 3 of the California Constitution states, “[p]rivate corporations and persons that own, operate, control, or manage a line, plant, or system for . . . the transmission of telephone . . . directly or indirectly to or for the public, . . . are public utilities. . .” (Emphasis added.)” Id at 9.

It was further stated that “[t]he fact that a company does not own or physically operate a switch does not determine whether it operates or manages facilities in

connection with the provision of telecommunications services. From the customer's view point, the switchless reseller is the telephone company; it orders the establishment of service to the customers' premises and controls the rates that will be charged, and is the business they will look to when problems arise. The switchless nature of a business is irrelevant to its status as a public utility." Id at 10.

There is another reason for finding that switchless resellers are public utilities. Such resellers undoubtedly have offices, desks, files, computers, telephones, and so on which they use in their telecommunication services businesses. This "equipment, appliances, real estate, fixtures, and personal property," is owned, controlled, operated and/or managed in order "to facilitate communication by telephone," and thus is "telephone line." (PU Code § 233) If a reseller owns controls, operates, or manages any telephone line for compensation, it is a "telephone corporation." (PU Code § 234.) "[S]uch ownership may be of 'any part' of such plant or equipment." (Commercial Communications, Inc. v. Public Utilities Commission (1958) 50 C. 2d 512, at 520-521.)

Thus, it does not matter if a reseller does not own equipment over which calls actually move. If a telephone corporation provides a commodity or service to the public for compensation, it is a public utility. (PU Code § 216). Therefore, pursuant to PU Code, Tech Verb requires, and the Commission has authority to grant it, a CPCN.

**b. Tech Verb Intended Offering Constitutes "Telecommunications Services."**

Although Tech Verb' facilities may support services beyond communications by telephone, its facilities will offer the basic transmission service that is considered "telecommunications service" under federal law and which this Commission has similarly considered as eligible for a CPCN. As a threshold matter, this Commission has often used the term "telecommunications services" that refer to the services offered by

telephone corporations for which it has granted CPCNs<sup>1</sup>, and has equated the federal terms “telecommunications services” and “telecommunications carrier” with the state terms “telephone corporation” and offering of service over a “telephone line.”<sup>2</sup> A provider of “telecommunications services” is a “telephone corporation” subject to the requirements of a CPCN.

The Federal Telecommunications Act of 1996 (“1996 Act”) defines “telecommunications service” as the “offering of telecommunications directly to the public, or to such classes of users as to be effectively available directly to the public.”<sup>3</sup> Federal law further defines “telecommunications” as the “transmission, between or among points specified by the user, of information of the user’s choosing, without change in the form or content of the information as sent and received.”<sup>4</sup> Thus, Tech Verb’s plan to resell internet service directly to its public school clients meets the federal definition of “telecommunications services.

Further, to the extent that Tech Verb offering of access to the Internet, for example, the Federal Communications Commission (“FCC”) has noted that the underlying transmission itself can be considered “telecommunications.”<sup>5</sup> Similarly, the FCC has recognized that the “transmission component of wireless broadband Internet access service is ‘telecommunications.’”<sup>6</sup> The FCC has also found that a broadband

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<sup>1</sup> The Commission has noted that “‘local exchange service(s)’ and ‘interexchange service(s)’ are terms of art in the telecommunications industry, and are part and parcel of the regulatory terminology employed by the Commission and by the Federal Communications Commission.” D.11-01-027, mimeo at 6-7. See, e.g., D.13-01-013 (granting CPCN for the provision of facilities-based and resold local exchange “telecommunications services”) (emphasis added). See also D.12-12-027, D.12-12-028, and D.12-10-040.

<sup>2</sup> See D.07-08-031, mimeo at n.3.

<sup>3</sup> 47 U.S.C. Section 153(53)

<sup>4</sup> 47 U.S.C. Section 153(50)

<sup>5</sup> See Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al., CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 n.15 (2005) (Wireline Broadband Report and Order) at para. 5.

<sup>6</sup> In the Matter of Appropriate Regulatory Treatment for Broadband Access to the Internet Over Wireless Networks, WT Docket No. 07-53, Declaratory Ruling, FCC 07-30 (2007), at para.1.

transmission service may be offered as “telecommunications service.”<sup>7</sup> Likewise, Tech Verb’s internet services are considered as telecommunication service and an offering of “telecommunications services” subjects Tech Verb to grant the CPCN.

**c. PU Code Sections 239 and 710 Do Not Prohibit the Commission from Granting a CPCN for the Telecommunications Services at Issue.**

Although Tech Verb’s CPCN application noted that it does not have current plans to offer voice service over its network using IP technology (VoIP service).<sup>8</sup> The offering of VoIP service itself is not subject to the CPUC’s review and approval, nor did it prevent the Commission from such approvals.

The enactment of PU Code Section 710, moreover, does not prevent the Commission from exercising its existing authority to grant a CPCN to Tech Verb. Specifically, Section 710 does not prohibit the Commission from its “existing regulation of... or existing Commission authority over, non-VoIP and other non-IP enabled wireline or wireless service,” which include telecommunications services.<sup>9</sup> Thus, the Commission cannot assert that it no longer has authority to grant CPCNs to entities offering “telecommunications services,” simply because those entities also offer VoIP services.

By its Application (A. 16-02-018) Tech Verb has voluntarily requested authority to operate as an Interexchange Carrier Telephone Corporation in California in order to resell internet service to its public school clients. Tech Verb seeks a CPCN to operate as a Switchless reseller so that it can resell internet service to its public school clients

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<sup>7</sup> See *Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities et al.*, CC Docket Nos. 02-33, 01-337, 95-20, 98-10, WC Docket Nos. 04-242, 05-271, Report and Order and Notice of Proposed Rulemaking, 20 FCC Rcd 14853 (2005) (Wireline Broadband Report and Order) at para. (emphasis added).

<sup>8</sup> PU Code Section 239 defines a VoIP service as that which: (A) Uses Internet Protocol or a successor protocol to enable real-time, two-way voice communication that originates from, or terminates at, the user’s location in Internet Protocol or a successor protocol; (B) Requires a broadband connection from the user’s location; (C) Permits a user generally to receive a call that originates on the public switched telephone network and to terminate a call to the public switched telephone network.

<sup>9</sup> PU Code Section 710(e)

and get entitled to a 50% discount as per the California Teleconnect Fund (CTF) including the right to request interconnection with public switched telephone network and other telecommunications carrier in accordance with Section 251 of the Federal Communication's Act (47 U.S.C. 251).

- 4) Tech Verb must also show that it has \$100,000 that is reasonably liquid and available to meet its first-year expenses, including deposits required by local exchange carriers or interexchange carriers or has profitable interstate operations to generate the required cash flow.

Pursuant to Decision (D.) 14-11-004, applicants who have profitable interstate operations may meet the minimum financial requirement by submitting an audited balance sheet and income statement demonstrating sufficient cash flow. However, new applicants, such as Tech Verb, are permitted to use any of the following financial instruments to satisfy the applicable unencumbered cash requirements established by D.14-11-004:

***Tech Verb responds to the Question as follows:***

Attached hereto as Exhibits A and B please find Tech Verb's Bank Statements and Certificate of Deposit, both of which should satisfy the liquidity and financial requirements.

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III. **CONCLUSION:**

For the forgoing reasons, the Commission has authority to grant Tech Verb a CPCN for the services it intends to offer. Tech Verb, Inc. hopes that the information provided herein is sufficient to facilitate the ALJ's determination on the Application.

DATED at Woodland Hills, California this 22<sup>nd</sup> day of August 2016.

Respectfully Submitted,

By: 

KEITH F. ELDER

Attorney for

**TECH VERB, INC.**

21650 Oxnard Street, Suite 500

Woodland Hills, CA 91367

818.827.9290

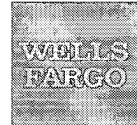
[kelder@elderfirm.com](mailto:kelder@elderfirm.com)



**EXHIBIT A**

# Platinum Business Checking

Account number: 2042408951 ■ July 1, 2016 - July 31, 2016 ■ Page 1 of 4



TECH VERB INC  
C/O TAGAWA & HO, LLP  
6101 W CENTINELA AVE STE 280  
CULVER CITY CA 90230-6359

## Questions?

Available by phone 24 hours a day, 7 days a week:  
Telecommunications Relay Services calls accepted

**1-800-CALL-WELLS** (1-800-225-5935)

TTY: 1-800-877-4833

En español: 1-877-337-7454

Online: [wellsfargo.com/biz](http://wellsfargo.com/biz)

Write: Wells Fargo Bank, N.A. (114)  
P.O. Box 6995  
Portland, OR 97228-6995

## Your Business and Wells Fargo

The plans you establish today will shape your business far into the future. The heart of the planning process is your business plan. Take the time now to build a strong foundation. Find out more at [wellsfargoworks.com/plan](http://wellsfargoworks.com/plan).

## Account options

A check mark in the box indicates you have these convenient services with your account(s). Go to [wellsfargo.com/biz](http://wellsfargo.com/biz) or call the number above if you have questions or if you would like to add new services.

Business Online Banking  
Online Statements  
Business Bill Pay  
Business Spending Report  
Overdraft Protection

|                                     |
|-------------------------------------|
| <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> |
| <input checked="" type="checkbox"/> |
| <input type="checkbox"/>            |

## Activity summary

|  |                     |
|--|---------------------|
| Beginning balance on 7/1               | \$117,291.35        |
| Deposits/Credits                       | 320,064.97          |
| Withdrawals/Debits                     | - 110,364.19        |
| <b>Ending balance on 7/31</b>          | <b>\$326,992.13</b> |
| <br>Average ledger balance this period | <br>\$253,193.64    |

Account number: 2042408951

**TECH VERB INC**

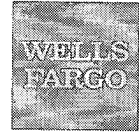
California account terms and conditions apply

For Direct Deposit use  
Routing Number (RTN): 121042882

For Wire Transfers use  
Routing Number (RTN): 121000248

## Overdraft Protection

This account is not currently covered by Overdraft Protection. If you would like more information regarding Overdraft Protection and eligibility requirements please call the number listed on your statement or visit your Wells Fargo store.

**Interest summary**

|                                       |              |
|---------------------------------------|--------------|
| Interest paid this statement          | \$9.41       |
| Average collected balance             | \$246,554.03 |
| Annual percentage yield earned        | 0.04%        |
| Interest earned this statement period | \$9.41       |
| Interest paid this year               | \$39.66      |

**Interest withheld**

|                               |         |
|-------------------------------|---------|
| Interest withheld this period | \$2.63  |
| Interest withheld this year   | \$11.06 |

**Transaction history**

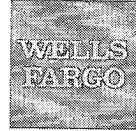
| Date                          | Check Number | Description   | Deposits/<br>Credits | Withdrawals/<br>Debits | Ending daily<br>balance |
|-------------------------------|--------------|---|----------------------|------------------------|-------------------------|
| 7/5                           |              | Usac Payment xxxxx1182 003041\Ge*1*30962\lea*1*000030933\                 | 60,096.27            |                        |                         |
| 7/5                           |              | Blue Shield CA Blueshield W00442561000 Tech Verb Inc                      |                      | 2,826.00               | 174,561.62              |
| 7/6                           | 3853         | Check   |                      | 1,799.30               | 172,762.32              |
| 7/7                           | 3855         | Deposited OR Cashed Check   |                      | 75.00                  | 172,687.32              |
| 7/8                           |              | Adp Payroll Fees Adp - Fees 160708 2Rskd 4513935 Tech Verb Inc            |                      | 125.34                 | 172,561.98              |
| 7/11                          | 3849         | Check   |                      | 800.00                 | 171,761.98              |
| 7/12                          | 3851         | Check   |                      | 60.00                  | 171,701.98              |
| 7/13                          |              | Usac Payment xxxxx1182 E*1*929\lea*1*000000929\                           | 52,037.52            |                        | 223,739.50              |
| 7/14                          |              | Telepacificom Purchase 160714 31971697 Tech Verb Inc                      |                      | 1,055.44               | 222,684.06              |
| 7/15                          | 3852         | Deposited OR Cashed Check   |                      | 880.00                 |                         |
| 7/15                          |              | U.S. Bank N.A. Payment 160714 000000514687401 2016194780-OR*Tech Ver      |                      | 1,179.79               |                         |
| 7/15                          |              | U.S. Bank N.A. Payment 160714 000000514687058 2016194803-OR*Tech Ver      |                      | 1,179.79               | 219,444.48              |
| 7/19                          |              | Twcable National Cable Svcs 160718 4603392 Tech Verb, *Inc.               |                      | 4,745.95               |                         |
| 7/19                          | 3858         | Check   |                      | 5,040.67               | 209,657.86              |
| 7/20                          |              | Usac Payment xxxxx1182 1653\lea*1*000001653\                              | 656.10               |                        |                         |
| 7/20                          |              | Deposit Made In A Branch/Store  | 207,265.67           |                        |                         |
| 7/20                          | 3857         | Check   |                      | 3,774.50               | 413,805.13              |
| 7/25                          | 3856         | Check   |                      | 60,096.27              | 353,708.86              |
| 7/29                          | 3854         | Deposited OR Cashed Check   |                      | 850.00                 |                         |
| 7/29                          |              | Adp Tax/401K Tax/401K 160729 Ryskd 072907A01 Tech Verb Inc                |                      | 6,215.19               |                         |
| 7/29                          |              | Adp Eepay/Garnwc Eepay/Garn 160729 938400399838Skd Tech Verb Inc Tech Ver |                      | 19,658.32              |                         |
| 7/29                          |              | Interest Payment  | 9.41                 |                        |                         |
| 7/29                          |              | Federal Tax Withheld  |                      | 2.63                   | 326,992.13              |
| <b>Ending balance on 7/31</b> |              |   |                      |                        | <b>326,992.13</b>       |
| <b>Totals</b>                 |              |   | <b>\$320,064.97</b>  | <b>\$110,364.19</b>    |                         |

The Ending Daily Balance does not reflect any pending withdrawals or holds on deposited funds that may have been outstanding on your account when your transactions posted. If you had insufficient available funds when a transaction posted, fees may have been assessed.

**Summary of checks written** (checks listed are also displayed in the preceding Transaction history)

| Number | Date | Amount | Number | Date | Amount   | Number | Date | Amount    |
|--------|------|--------|--------|------|----------|--------|------|-----------|
| 3849   | 7/11 | 800.00 | 3853   | 7/6  | 1,799.30 | 3856   | 7/25 | 60,096.27 |
| 3851 * | 7/12 | 60.00  | 3854   | 7/29 | 850.00   | 3857   | 7/20 | 3,774.50  |
| 3852   | 7/15 | 880.00 | 3855   | 7/7  | 75.00    | 3858   | 7/19 | 5,040.67  |

\* Gap in check sequence.



### Monthly service fee summary

For a complete list of fees and detailed account information, please see the Wells Fargo Fee and Information Schedule and Account Agreement applicable to your account or talk to a banker. Go to [wellsfargo.com/feefaq](http://wellsfargo.com/feefaq) to find answers to common questions about the monthly service fee on your account.

|   |                                      |  |
|---|--------------------------------------|--|
| Fee period 07/01/2016 - 07/31/2016  | Standard monthly service fee \$40.00 | You paid \$0.00                                  |
| <b>How to avoid the monthly service fee</b>   | Minimum required                     | This fee period                                  |
| Have any <b>ONE</b> of the following account requirements   |                                      |  |
| · Average ledger balance  | \$25,000.00                          | \$253,194.00 <input checked="" type="checkbox"/> |
| · Combined balances in linked accounts, which may include   | \$40,000.00                          | <input checked="" type="checkbox"/>              |
| · Average ledger balances in business checking, savings, and time accounts  |                                      |  |
| · Most recent statement balance of Wells Fargo business credit cards, Wells Fargo Business Secured Credit Card, BusinessLine® line of credit, Wells Fargo Small Business Advantage® line of credit, Working Capital Line of Credit, Advancing Term Line of Credit, and BusinessLoan® term loan                  |                                      |  |
| · Combined average daily balances from the previous month for Wells Fargo Business PrimeLoan™, Commercial Equity Loan, Commercial Refinance Loan, Commercial Purchase Loan, Commercial Equity Line of Credit, Small Business Advantage® loan, Equipment Express® loan, and Equipment Express® Single Event loan |                                      |  |

The Monthly service fee summary fee period ending date shown above includes a Saturday, Sunday, or holiday which are non-business days.  
 Transactions occurring after the last business day of the month will be included in your next fee period.  
 WK/WK

### Account transaction fees summary

| Service charge description   | Units used | Units included | Excess units | Service charge per excess units (\$) | Total service charge (\$) |
|------------------------------|------------|----------------|--------------|--------------------------------------|---------------------------|
| Cash Deposited (\$)          | 0          | 20,000         | 0            | 0.0030                               | 0.00                      |
| Transactions                 | 28         | 500            | 0            | 0.50                                 | 0.00                      |
| <b>Total service charges</b> |            |                |              |                                      | <b>\$0.00</b>             |



**EXHIBIT B**



# Time Account Receipt/Disclosure

|                                      |                        |                                    |                          |
|--------------------------------------|------------------------|------------------------------------|--------------------------|
| Banker Name:<br>QURESHI, UBAID AHMED |                        | Officer/Portfolio Number:<br>L4513 | Date:<br>08/16/2016      |
| Banker Phone:<br>213/614-2707        | Store Number:<br>04513 | Banker AU:<br>0000840              | Banker MAC:<br>E2818-011 |

## Customer/Account Information

|   |                         |                                   |  |                      |                              |
|---|-------------------------|-----------------------------------|--|----------------------|------------------------------|
| Primary Customer Name:<br>TECH VERB INC   |                         |                                   | Customer Number (ECN):<br>482789891849315                |                      |                              |
| COD:<br>00114   | Product:<br>CDA         | Account Number:<br>2165063757     | Open Date:<br>08/16/2016                                 | Term:<br>12 months   | Maturity Date:<br>08/16/2017 |
| Time Account Opening Deposit:<br>\$25,000.00  | Interest Rate:<br>0.05% | Annual Percentage Yield:<br>0.05% | Fixed Rate:<br>Yes                                       | Variable Rate:<br>No | Renewal Term:<br>12 months   |
| Interest will be paid:<br>EVERY 01 MONTHS AND AT WITHDRAWAL   |                         |                                   | The method of payment will be:<br>BY ADDING TO PRINCIPAL |                      |                              |
| Renewability:<br>YOU WILL AUTOMATICALLY RENEW MY TIME ACCOUNT AT MATURITY UNLESS I NOTIFY YOU OTHERWISE |                         |                                   |  |                      |                              |

## Account Title and Mailing Information

|   |   |
|---|---|
| Customer(s) Listed on Account:<br>TECH VERB INC | Mailing Address:<br>C/O TAGAWA & HO, LLP        |
|   | Address Line 2:<br>6101 W CENTINELA AVE STE 280 |
|   | City:<br>CULVER CITY                            |
|   | State:<br>CA                                    |
|   | ZIP/Postal Code:<br>90230-6359                  |
|   | Country:<br>US                                  |

This is a receipt. It need not be presented at the time you obtain payment from the Bank.

# Customer Copy